

Internal Revenue Service

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Department of the Treasury

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05

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November 13, 2008

Legend

FP =

FSub1 =

Sub1 =

Sub2 =

Partnership 1 =

FSub2 =

Parent =

US Sub1 =

US Sub2 =

Old FSub3 =

FSub4 =

FSub5 =

Amalco =

New FSub3 =

CountryA =

CountryB =

Date1 =

Date2 =

Business 1 =

Business 2 =

aa =

bb =

cc =

dd =

zz =

State Y =

Dear :

We respond to your letter dated July 14, 2008, submitted on behalf of Parent, requesting rulings concerning the Federal income taxation of two consummated transactions that are related. Additional information was submitted in letters dated October 30 and November 13, 2008. The information submitted is summarized below.

FP, a publicly traded corporation, is incorporated under the laws of CountryA, and is the parent of a group of affiliated corporations (the "FP Group"). FP owns all of the outstanding stock in FSub1, a corporation incorporated under the laws of CountryA. FSub1 owns all of the outstanding stock in Sub1, and Sub 1 owns all of the outstanding stock in Sub2. Sub 1 and Sub 2 are both domestic corporations. Sub1 and Sub2 own aa percent and bb percent, respectively, of the outstanding interests in Partnership 1, a State Y general partnership. Partnership 1 owns all the outstanding stock in FSub2, a corporation incorporated under the laws of CountryA which has elected to be disregarded as an entity separate from Partnership 1 for Federal tax purposes. FSub2 owns all the outstanding stock in Parent, the common parent of a group of affiliated corporations that files a consolidated Federal income tax return (the "Parent Group"). Parent owns all the outstanding stock in US Sub1 and US Sub2, both of which are members of the Parent Group. The Parent Group is a calendar year taxpayer.

Prior to Date1, US Sub1 owned all of the outstanding stock in Old FSub3, and US Sub2 owned all the outstanding equity interests in FSub4, which in turn owned all of the outstanding stock in FSub5. Each of Old FSub3, FSub4, and FSub5 were incorporated under the laws of CountryB and were treated as a corporation for Federal tax purposes. Old FSub3 was engaged in Business 1, and FSub4 and FSub5 were engaged in Business 2.

The FP Group wanted to combine Business 1 and Business 2 to simplify its legal structure by removing Old FSub3 and having just one trading entity in CountryB ("Amalco"). For what are represented as valid business reasons, US Sub1, US Sub2, and Old FSub3, FSub4, and FSub5 (the "Amalgamating Companies") entered into the following series of transactions, that was effective on Date1 (the "Amalgamation"):

- (i) US Sub1 contributed all of its stock in Old FSub3 to FSub4 in exchange for FSub4 stock.
- (ii) OldFSub3, FSub4 and FSub5 amalgamated under law. For law purposes, all of the assets and liabilities of Old FSub3, FSub4

and FSub5 became assets and liabilities of a newly formed corporation (Amalco).

- (iii) Old FSub3, FSub4 and FSub5 ceased to exist as entities separate from Amalco.

After the Amalgamation, US Sub1 held cc percent of the stock in Amalco in exchange for all of its stock in Old FSub3, and US Sub2 held dd percent of the stock in Amalco in exchange for all of its stock in FSub4 and FSub5. The parties to the Amalgamation have represented that the Amalgamation qualified as a tax free reorganization under §368(a)(1).

Following the Amalgamation, FP's Board of Directors conducted an in-depth strategic review of Business 1 and Business 2. The Board concluded that substantial shareholder value could and should be unlocked both by selling Business 2 and by focusing and developing Business 1. To accomplish the business objectives set forth by the Board, US Sub1, US Sub2 and Amalco undertook the following series of steps to separate Business 1 and Business 2 by restoring US Sub1 to the same positions (in all material legal and financial arrangements) as it would have been had the Amalgamation not occurred. The completed transactions (the "Rescission Transactions") occurred on Date2 (a date within the same year as Date1):

- (i) US Sub1 formed New FSub3, a CountryB corporation, and transferred to it the cc percent interest in Amalco held by US Sub1 solely in exchange for stock of New FSub3.
- (ii) Amalco transferred all of the assets and liabilities (other than the assets, if any, disposed of by Amalco in the ordinary course of its business, and including the additional assets, if any, acquired by Amalco in the ordinary course of its Business 1) formerly held by Old FSub3 to New FSub3 solely in exchange for stock in New FSub3.
- (iii) Amalco redeemed the Amalco stock held by New FSub3 by distributing to New FSub3 an Amalco promissory note ("Note1") with a face amount of \$zz.
- (iv) New FSub3 redeemed the New FSub3 stock owned by Amalco by distributing to Amalco a new FSub3 promissory note ("Note2") with a face amount of \$zz and terms identical to the terms of Note1.
- (v) Immediately following Amalco's contribution to New FSub3, Amalco distributed all of its stock in New FSub3 to US Sub1 in complete redemption of US Sub1's stock in Amalco.
- (vi) Note1 and Note2 were extinguished by way of set-off.

Parent also makes the following representations:

- (a) The parties to the Amalgamation have treated and will continue to treat Date1 as the effective date of the Amalgamation for all CountryB legal and tax purposes, as well as for U.S. Federal tax purposes.
- (b) The Rescission Transactions occurred within the same taxable year of all the relevant parties as the Amalgamation.
- (c) The intent of the Rescission Transactions is, and the effect of the Rescission Transactions will be, to restore US Sub1 to the same position in all material respect to the legal and financial arrangements with respect to their ownership of New FSub3 that would have existed had the parties never entered into the Amalgamation.
- (d) Neither US Sub1 nor any other member of the FP Group has taken or will take a material position for Federal tax purposes inconsistent with the position that it would have taken had the parties not entered the Amalgamation.
- (e) Amalco made no distributions to its shareholders with respect to their Amalco stock during the period beginning on Date1 and ending on Date2.
- (f) As a result of the Rescission Transactions, all material items of income, deduction, gain and loss of each member of the Parent Group will be reflected on the Parent Group's consolidated income tax return as if the parties had not entered into the Amalgamation.
- (g) New FSub3's articles of incorporation are substantially similar to Old FSub3's articles of incorporation as in effect prior to the Amalgamation in all respects other than New FSub3 is authorized to issue both common stock and a separate class of shares referred to as special Class A shares.
- (h) New FSub3's bylaws are substantially similar to Old FSub3's bylaws as in effect prior to the Amalgamation.
- (i) All of Old FSub3's assets and liabilities transferred to or assumed by Amalco in the Amalgamation (other than the assets, if any disposed of by Amalco in the ordinary course of its trade or business) were transferred to or assumed by New FSub3 as a result of the Rescission Transactions.

- (j) All of the assets and liabilities transferred to New FSub3 in the Rescission Transactions are assets or liabilities that were either— (1) transferred to or assumed by Amalco by Old FSub3 in the Amalgamation; or (2) purchased or incurred by Amalco in the ordinary course of operating its Business 1.
- (k) Any assets or liabilities incurred by Amalco for use in the operation of its Business 1 would have been purchased or incurred by Old FSub3 for use in that same business if the Amalgamation had not occurred.
- (l) Any assets or liabilities associated with the Business 1 and disposed of or satisfied by Amalco in the ordinary course of its business would have been disposed of or satisfied by Old FSub3 in the operation of that same business if the Amalgamation had not occurred.
- (n) New FSub3 will indemnify Amalco for any claim resulting from Amalco's operation of the assets transferred to Amalco by Old FSub3 in the Amalgamation between the effective date of the Amalgamation and the date of the completion of the Rescission Transaction.

Based solely on the facts submitted, the representations made, and the parties' restoration, before the end of the taxable year, of the relative positions they would have occupied if the Amalgamation had not occurred (Rev. Rul. 80-58, 1980-1 C.B. 181) we rule that, for Federal income tax purposes:

- (1) Old FSub3 will be treated as not having amalgamated into Amalco, and Old FSub3 and Amalco will be treated as two separate corporations at all times during the taxable year; and
- (2) New FSub3 will be treated as Old FSub3 for Federal tax purposes such that US Sub1 will be treated as owning all of the stock in Old FSub3 at all times from the effective date of the Amalgamation through the effective date of the Rescission Transactions.

Except as specifically set forth above, we express no opinion concerning the tax consequences of these transactions under any other provision of the Code and regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, these transactions.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Mark J. Weiss

Mark J. Weiss
Assistant Branch Chief, Branch 1
Office of Associate Chief Counsel
(Corporate)